PRICE MAINTENANCE—DISCUSSION

L. H. Haney: At the outset I must question the implication that price maintenance would mean a maintenance of the existing system of marketing. The plan of legally-maintained prices, or of legally forbidden price cutting, is an adjunct to the relatively recent increase in advertised "identified" goods, and it is seeking to gain acceptance under the guise of the new tendency to recognize various restraints of trade as reasonable. Surely, to insure a given spread of profits to the same old classes of business men is not to insure that these men will conduct their business in the same old way. Making due allowance for exceptions, the existing system is characterized by the prevalence of responsible retail entrepreneurs, and by the general acceptance of the competitive ideal. Price maintenance would, where applied, take away from marketing all but the form of entrepreneurial activity, and it would remove an essential element in competition. As a rule, "identified" goods, such as Dr. Miles's "remedies," are actually sold, title passing to the dealers, and the jobber or retailer runs, or may have to run, all the risks of not disposing of them at a profit. Indeed, what the price-maintenance people are asking is to retain the *form* of the middleman system, while themselves absorbing a large part of the middleman's job and profits. The manufacturer is to determine quality and price and middleman's profit, and is to provide the advertising campaign. Then the retailer is to buy such a quantity as he desires, or as the manufacturer persuades him he can sell, and is to take his chances on being able to dispose of it at the price fixed and maintained by the manufacturer. (Of course this eliminates price competition among retailers.) All this would tend to reduce the importance of the business establishment as a unit and of business-unit competition; for retailers would not be free to treat the various items of their stocks as aggregate units. If they desire to sell out at reduced rates a line judged less profitable than another, or if they desire to adopt the "leader" policy, they are estopped by the law.

Again, price maintenance would seriously hamper the working of cost forces. To sell at one price, regardless of shipping charges or volume of business, may be profitable to the advertiser, but it is not good social economy. Mr. Ford has been lauded for refusing to make reduced rates on large orders from Europe, and the Kellogg people have laid their wares down at all points at one price, themselves absorbing shipping charges. This gives the manufacturer greater power to discriminate against nearby points and large buyers by maintaining a flat price.

Suppose that the price-maintenance system were generalized,—an excellent test for bringing out incompatibility between individual and social interests. The following situation would arise: All products would be identified (as to package or container, at least), and all would be advertised and sold under some trade name or brand. All would bear prices named by the manufacturer or some producer in the early stages. As a result, marketing would be dominated by the manufacturer, who would do the advertising and name the price to the consumer; and retailers and jobbers would become mere joint agents, distributing their products for various manufacturers at fixed rates of commission. Business-unit competition would be reduced, and manufacturers would be encouraged to collect differentials from near points and large buyers.

As to the kind of competition that would remain, the advocates of price maintenance do protest much that it would not be decreased. A letter sent out by the so-called American Fair Trade League says: "The truth is that a uniform price on a standard article directly encourages the kind of competition most valuable to the public. It invariably forces other manufacturers to compete in quality for the consumer's favor. . . ." You will note that the League is able to distinguish different brands of competition and to pick out just the one most valuable to the public. But I would call attention to the false notion of competition implied in the foregoing statement. Competition can hardly mean much unless it embraces both quality and price; for quality and price themselves mean little unless taken together. "Price" means nothing except as the amount paid for a definite quantity of a definite quality of a good; a quality is economically unimportant except as associated with price per measurable unit. What do the superfine qualities of Cuticura soap or Gillette razors mean aside from cost per piece? Competition that does not work for an adjustment in and between both elements in the exchange is partial and imperfect. Assuming that in some abstract way quality would be secured by such competition, we should have no guarantee of economy.

Not only would such competition be incomplete, but, as a moment's reflection upon railways, drugs, and cigars will show, we can not count upon competition in quality to insure even quality,—any more than we can count upon competition in general to insure fair rates. After years of competition in service alone, the railways have to be compelled to be cleanly, safe, punctual, and convenient. Does anyone here believe that Peruna and Cuticura will do what they are identified as claiming to do? Does the normal course of quality in cigars not remind us of the Roman Empire? It is specious to point to poor or

adulterated goods sold in bulk for the purpose of concluding that trade-marks and maintained prices are the remedy.

The fact is that the proposed system takes the emphasis off quality and puts it on advertising and salesmanship. To fix a legally enforceable price as a means of securing quality is to invite the policy of putting the price as high as the "traffic will bear" and of advertising heavily to turn the stock over at that price; while quality, after all, remains at the mercy of commercial exigencies. This attempt to make quality depend upon price gets the cart before the horse. The logical way to maintain quality is to make price depend upon quality, making quality the means of securing sales. In this way, the price is necessarily related to the character of the good.

The old cracker-barrel system of retailing obviously falls short in that it leaves too much to the consumer, and the connection between quality and price can be too easily broken by the careless or dishonest retailer. The new sanitary-package system leaves too much to the wiles of the advertiser and to the honesty and care of the manufacturer. Neither system is safe. Professor Taussig indicates the wise course: In case of goods that are vitally essential to society, we cannot trust quality to the vicissitudes of competition at all. Here is the proper sphere of pure food regulation. For the rest, the system which, *while giving him the fairest chance to compare quality with price,* throws the responsibility upon the buyer, is, in my judgment, best. Because of the abuse of advertising which it is apt to bring, I am inclined to think that the price-maintenance system is not the best.

The great change in the old system of marketing is due to the development of advertising, a fact which is illustrated by the solicitude of the manufacturers concerning the maintenance of retail prices. I would even go so far as to say that it is not the manufacturers, as such, but rather the advertisers, who are back of the Stevens Bill and the propaganda for the protected price system. There is no lively interest in maintaining prices in general, but only the particular prices of certain "identified" goods, and these goods have been identified only by means of advertising. Merely to register a trade-mark is but to create a potentiality, and the value depends upon the publicity that is given. More than this, the process of maintaining prices would depend upon the activity of the producer in creating and maintaining a demand sufficient to sell his wares at the price fixed, i.e., upon advertising. *Vice versa,* the legalization of price maintenance would give a great incentive to advertising, both intensive and extensive, by making the prize of the successful advertiser greater and more secure.

To my mind, the whole propaganda under discussion begins and ends in a veritable apotheosis of advertising. It is essentially connected with the idea that anyone can take anything, calling it any name,—from Zu Zu to Dr. Pierce's Favorite Prescription,—and by continuous repetition and suggestion so work upon the "public" as to "create a demand,"—so the cant phrases run. Then the advertiser is to be guaranteed a vested interest in that demand.

If you assume "identified" articles and the power of advertising, and if you grant power to the manufacturer to fix a price and to control the dealers' margins, then you have a situation which amounts to government guarantee of profits on advertising.

It is argued that the manufacturers of the Perunas, Spirellas, Cuticuras, Victrolas, Uneedas, Wrigleys, Schlitzs, Sanatogens, Ingersolls, Duffeys, etc., have spent hundreds of thousands of dollars in advertising campaigns and have really done their own selling; that it is unfair to allow another to cut the prices they have made, and deprive them of their markets. This argument I believe to be unsound for two reasons. In the first place, I do not think that a really good thing is ever seriously hurt by price cutting. The baneful effects of price cutting lie largely in the minds of those whose goods are known by their advertised rather than their real virtues. Does anyone think the less of Listerine, or Colgate's, or his Ingersoll watch, because he got them at a bargain? It is the overrated product that suffers. For example, not long ago there appeared in *Everybody's Magazine* a series of articles on "Better Business," in one of which the sad fate of Cosmo Buttermilk Soap was bewailed at length. Its fair fame, "built up" by advertising exaggeration, had been damaged by making it a "leader" at the department stores, nor could all the king's horses and men rebuild it. Does one need to ask why? You scarcely require to be reminded that it was "Sanatogen" which was involved in the recent Bauer Chemical Company case. Sanatogen is a much-advertised product. Its merits have probably been grossly overrated. These cases make one wonder if it is not generally that part of the price that is puffed up by means of advertising that is hurt by the cutting.

In the second place, even if good things might be injured, it seems to me that there is nothing in the motive nor the final result of the price cutter's activity to warrant the interference of the state. But Professor Taussig's paper covers this point.

In any case, the argument proves too much. The secretary of the Fair Trade League, in a letter already referred to, says: "The confusion of the consumer by the destruction of standards of value permits

every sort of public exploitation and deception through dishonest advertising." But what assurance have we that the manufacturer's advertisements will be more honest? If the public is so easily duped by the price cutter as the argument implies, how much more helpless will they be before the subtle suggestion of the price maintainer's advertising expert. Surely we could not intrust them to a system in which advertisers controlled the selling price and the quality of the things that they advertised. Or, if the public is not so gullible as implied, then they do not need the protection which the price maintainers are so eager to extend to them.

Before passing to a brief summary, allow me to observe that in my economy based upon free valuation and choice by individuals, it is essential that the individual be given a chance to choose intelligently. This is a part of the ideal of equal opportunity. It is blind folly to prate about individual rights and mean the right to be defrauded by "inside" manipulators and by patent-medicine ghouls. Pure advertising is not restriction; it frees the masses to choose on the basis of truth. Perhaps the most serious error in this much-beclouded issue is the assumption that "manufacturers who have spent much time and large sums of money to establish favorable reputations for products bearing their names, or trade names, positively cannot afford to misrepresent their goods to the public or allow their lines to fall below the standards they have established."[1] There will always be a new name to try; there will always be a new generation; there will always be the ignorant. We know that one way to make money is to shift continuously from one brand to another, wrecking each in turn.

I can best sum up the case by stating that from the standpoint of public policy two main arguments are made in favor of price maintenance: (1) that it is a means of securing better quality, and (2) that it is desirable as a piece of justice to manufacturers who are liable to lose markets through price cutting.

1. As to the quality argument: (a) The government is asked to back the measure, which raises the question, would it be wise for the state to take upon itself the maintenance of quality? This is more than doubtful; but, waiving this point, (b) would the best way to maintain quality—whether by the government or not—be to allow private business men to control marketing by fixing prices for other business men? My conclusion is that, if such a policy were generalized, we should be forced to resort to regulation to insure a relation between quality and price. (c) Therefore, the best way to get quality is the direct way, which means, first, effective pure-food and drug legislation; second,

[1] *Holland's Magazine*, Oct., 1915.

pure advertising; and, third, pure trade-marks. I believe that the last two come to the same thing, and that pure advertising is both more fundamental and more feasible. It would take away from the socially undesirable trade-marks the chance to prosper.

2. As to the justice of protecting manufacturers: In my judgment one would be safe in challenging anyone to produce a single case in which a socially desirable good that sells on its merits has had its market seriously damaged by price cutting.

W. F. GEPHART: Modern industrial society has become so complex, and individual business welfare so dependent upon the conduct of others, that the political organization of society is being constantly called upon to aid in securing ends for a particular group which that class often sincerely conceives to be for the public welfare.

There is great temptation, therefore, to assign an efficacy to governmental activity which it does not possess, either because of the nature of political institutions or because of the character of the phenomena which is sought to be controlled. This is especially true of governmental activity in relation to economic affairs, and nothing is more common than the failure of statutory law enacted in opposition to economic principles. This I conceive to be very largely the situation in respect to the proposal to enact a law which according to its provisions permits "any producer, grower, manufacturer, or owner under trade-mark or special brand to prescribe the sole uniform price at which each article may be resold."

The question has arisen largely on account of two developments: first, the losses which have resulted from the excessive competition in the selling of goods; and, second, the enormous increase in the number of specialties which by an extensive development of advertising have found a large market.

The evils of a competitive system in the production and sale of goods are easily recognized by every student of economics. But what is not so apparent is the beneficent effect of such a system. Failures of manufacturers, merchants, and business firms are duly catalogued and in each case come under the personal observation of people, often enlisting our sympathy for a friend or an acquaintance. Few individuals failing in business are disposed to attribute their failure to their own inefficiency. The fault is assigned to conditions over which they have no control. It is due to the cutting of prices, to the trust, to chain-stores, to the failure of crops, or to any one of many causes, remote from the one failing.

It is not surprising, therefore, that one of these causes now frequently advanced should be sought to be controlled by an artificial method of stabilizing the fluctuating conditions in the production and selling of goods. Like many economic panaceas suggested, the fixed-price idea has considerable plausibility and such seeming fairness that it commends itself to many different economic classes. Let it be understood, however, that there are three distinct classes directly interested in the suggestion: the producer, who is its chief promoter and beneficiary; the distributer, the second claimant to benefit; and, finally, the consumer who is the residual legatee. Let us examine some of the more important arguments adduced in favor of the fixed-price principle.

It is said that under such a system the distributer would be assured a fair profit whereas he now frequently does business at a loss and is often forced into bankruptcy. It is doubtless true that many retailers, probably the majority of them, do not know their specific costs of selling. But a system of fixed prices would not make the retailer any more efficient, nor enable him to more easily analyze his costs. Whatever losses come to the consumer from the existence of a large number of inefficient retailers would not be lessened. Under the present system the most efficient are being continually eliminated, and under the proposed system they might tend to be perpetuated, since they become in a sense the clerks or agents of the producer of the article sent to them, its price and conditions of retailing already determined.

Successful merchandising from the viewpoint of the public as well as that of the merchant consists in the ability to turn goods into cash and cash into goods. Is the retailer to be a merchant, or a clerk who hands out goods to the consumer whose demand has been created by advertising?

But even granting that a fair profit is provided for the retailer, it does not follow that the proposal is justified. This asumes some inherent merit in the system of retailing per se. It is not reasonable to suppose that the economic organization, especially as regards the distributive side, has by a process of constructive evolution arrived at a fixed point of final superiority. As a matter of fact the ability of the retailer to continue in business cannot be guaranteed by the manufacture of articles to be sold at a fixed retail price. The retailer's enterprise, his location, and many other factors finally decide whether he can continue in business. Nor is it true that by a system of fixed prices he is guaranteed a higher net profit. He may sell many other articles, for it is not possible that the situation will be reached when all the articles, even those of a small retail grocer, will be sold under the

fixed-price system. Then, too, what motives will actuate the producer of this fixed-price article to permit the retailer to have any more than the lowest possible margin of profit? It is true that the producer must have many thousand retailers to sell his fixed-price article, but frequently the retailer has no choice whether he will or will not carry in stock an article. The producer has often by a system of advertising created a demand for the article, and just in proportion as he creates a demand so in that proportion is he able to dictate selling prices to the retailer. Past experience shows that the retailer has often been compelled to carry in stock many such articles upon which the profit was below that received for other articles.

It is frequently argued that because a producer has discovered some new method of preparing a product for the market and has spent large sums in acquainting the public with it, some peculiar right in morals and law is thereby created for him whereby he is entitled to secure a return on his expenditure. But the public placed him under no compulsion to make the investment in producing and popularizing his product. He is in the same situation as most other investors are. One may purchase a public bond, another an industrial security, another invest his capital or direct his enterprise to this or that activity, each of which carries with it no guarantee of a return on the investment. It would doubtless be a great gain for society if each could direct his labor and invest his capital in such a manner that no risk is involved in securing a return. But there is no burden of duty on the consumer to preserve in business any particular retailer, group of retailers, or other business units. If fair and free opportunity is given to each to exercise his enterprise, his efficiency or inefficiency, this is all that any business class should expect.

To demand that the public select a special class of producers or distributers and guarantee returns to them without some very evident returns to the public is a demand which will not readily be met. In the case of patents, copyrights, and trade-marks some exception has been made for generally accepted benefits which are promised.

But the ordinary manufacturers and jobbers cannot be expected to be freed from certain forms of competition which operate on all. Indeed it is quite possible that even if the right to fix prices were granted, such producers would find no real benefit. Such a solution would not result in a static condition in distribution. Other difficulties would arise to plague producers of such goods quite as serious as they suppose the present difficulties are.

It is frequently argued that where a demand has been created by

extensive advertising for a certain good at a fixed price, the continued purchase by the consumer is proof of his satisfaction of the price and the quality of the article. This is attributing to the consumer a more accurate knowledge of the quality of goods than he usually possesses. Many goods cannot be accurately judged in respect to their quality either before or after consumption.

The argument is not logical in that it states that the producer could not continue to sell his fixed-price article if consumers were not satisfied with its quality and price, yet in the next sentence it is stated that the particular consumer buys an inferior article at a lower price, thus destroying the market for the superior article at the fixed price. As a matter of fact, it cannot be proved that all fixed-price articles are superior. Then, too, the consumer often continues to purchase the article simply because there is no substitute for it.

It is said that if for any reason a producer is enjoying large profits in producing an article, this fact will induce additional and competing capital and enterprise to be directed to producing this particular article. Theoretically this may be true, in the sense that there is no hard and set-fast monopoly established, at least by the aid of the law; but, practically, capital may be deterred from flowing into this channel which is already filled from the fact of a large flow of goods, the market for which is already held by a producer who by extensive advertising and organization has practically monopolized it. To dislodge this particular producer would require a similarly large investment of capital with considerable attendant risk. New producers are thus deterred from entering the field and the possessors may well occupy it and place on the market a relatively inferior good for some time; at least until the risks of entering the same field are so largely reduced that new enterprise and capital are directed to it. What the consumer has thus lost by really active competition may be very large. Whatever may be the loss of competition under our modern business organization, its beneficent results can only be secured by a condition of great sensitiveness and freedom in the movement of the productive factors; that is, permitting their free flow to whatever point in the productive process promises a better return.

The policy of fixed prices largely disregards the difference in costs to different distributers and retailers, over some of which neither producer nor retailer has any control, while others are within the influence of the distributer. Is a safety razor made in Bangor, Maine, to be sold at the same price in Bangor as in a lumber camp in Washington? What experience we have had with fixed prices does not give assurance

that the factors influencing varying costs in retailing would receive consideration. The system is one of a rigid, unvarying, one-price-to-all character. Producers who argue for fixed prices assume to know at what price their product should be sold. The production cost on which they have certain knowledge is assumed to be governed by the same principles which determine distributing costs. It does not follow that a retailer is doing an unprofitable business simply because he cuts a price on an article which the producer wishes to have sold at a certain fixed price. The retailer with a varied line of goods should be as free as any other business man to determine the methods and conditions under which he shall transact his business. He may consider it good business to sell an article near, at, or below its cost to him. It is only important for him as a business man to please his patrons and secure a net profit on his business as a whole without any respect to the particular article. Were it possible, the farmer, the teacher, the minister, and other producers would hail with delight any law which would aid them in securing a market for their wares at a satisfactory price. It is well known that in the final cost of many goods the actual production cost is a minor part. But however much we may lament the toll taken by the present middlemen, the jobber, and retailer, little could be gained by the consumer if he were to exchange for the present toll-takers a new toll-taker, the producer.

Finally, even granting a beneficent effect to the principle of fixed prices for the producers of trade-marked and branded goods, why should the benefits be limited to this particular class of producers? A questionable result of modern merchandising has been the enormous development of special brands. Since the devising and registering of a trade-mark or brand is comparatively easy and simple, there would doubtless be a further extension of specialities of all kinds. We might well be buying at a fixed price, Sunkist oranges, Rocky Ford cantaloups, New Jersey potatoes, and Maine sweet corn, under the protecting control of our federal government. There would nevertheless remain a large group of producers whose goods would not lend themselves to this method of distribution and hence they could not secure the assumed benefits of the legalized practice.

There are no examples where any effort to fix prices in trade for long periods have been successful. Such attempts have always laid the foundations for secret price cutting and have incited the worst evils of underhand competition,—the ends sought to be avoided by the system of fixed prices.

The method of distribution now prevailing,—namely, the use of

manufacturer, jobber, and retailer,—rests solely upon the basis of economical distribution, and the present system must be displaced whenever a better or more economical method is devised. But to grant to manufacturers the boon of authorizing them to accept payment for their goods and yet control the disposition of the goods would seem to be so far-reaching and so arbitrary a placing of power in the hands of the producer that it would amount to a business revolution.

Vesting manufacturers with the authority to control the resale price of their products enables them, through the power of advertising, to create a demand for their merchandise, irrespective of its real intrinsic merit. The cost of advertising in many cases amounts to as much or more than it costs manufacturers to produce the merchandise, but the advertising adds nothing whatever to its merits. With capital to advertise, and with the power to regulate prices, it places in the hands of manufacturers, as a class, the ability indirectly to tax the consuming public.

Summarizing, it is therefore contended that:

1. The proposal is contrary to accepted methods of producing and distributing goods. It would tend to counteract the good features in the present system without correcting any of its well-recognized evils.

2. It is class legislation of the most vicious kind in that it applies only to a certain number of the producing group.

3. It seeks to produce a state of equilibrium in the midst of fluctuating economic phenomena over which no certain human control can be established.

4. It will probably produce no beneficial results for the particular classes for whom it is desired.

5. It is not practicable, for its observance cannot be enforced. It will invite evasion by one method or another.

J. R. Turner: This excellent and important paper is especially timely, for it gives us an able contribution against price maintenance at a period when legislators and the public are eager to see the problem from all angles.

If I properly interpret, there is a fundamental assumption upon which the arguments of this paper are constructed. This assumption, unsupported by evidence, is that maintained prices are high prices. True, the assumption is not given expression, but it is all the more deceiving for that reason. This assumption is against the weight of such authority as we have. This is a question of fact, and until a

reasonable number of price comparisons, based upon the relative qualities of goods, are made, the assumption seems unwarranted as a basis of argument. It assumes that which is to be proven; yet, if I interpret correctly it underlies both the psychological and the marketing arguments.

The psychic principle of prestige prices is found in both competitive and monopoly prices, in maintained and unmaintained prices. The paper has correctly defined price maintenance as competitive in nature, yet it illustrates prestige prices by means of virtually a monopoly product, diamonds. Is not this principle particularly applicable to unstandardized goods? Individuality and distinctiveness are emphasized by the particular stripe, cut, or quality that is uncommon. Standardized wares, made according to the commercial pattern, have the effect of a common five-cent fare on a street car,—all customers are put on the same plane. Standardization works toward equality, but it is only upon standardized goods that price maintenance is or could be practiced.

The dollar watch, the Ford automobile, and some other inexpensive commodities are goods whose makers have fought most earnestly for price maintenance. Neither the love of ostentation nor an appeal to vanity figures in their cosmopolitan selling campaigns. Maintained prices are a part of a selling campaign, and the manufacturer of the average commodity could not more effectively defeat his own purpose than to make his selling campaign uncosmopolitan. I suggest another basis for this policy, that of the protection of good-will in the operation of nation-wide marketing.

Professor Taussig would protect trade-marks, limit them to the producer, and legislate for standardization where feasible; otherwise he urges that "the purchaser should be left to take care of himself once for all." I assume that the way to protect a trade-mark is to protect the substance of which it is a mere symbol. The good-will, workmanship, and quality of a ware, and not the trade-mark badge, are the significant things. Qualities and quantities may and do vary while the trade-mark remains the same. Price maintenance on a competitive basis goes deeper. It enables good-will and quality to be maintained and improved. At the same price and under the same trade-mark, for instance, a package of Kellogg's cornflakes was, under the force of competition, both improved and doubled in weight.

Competitive price maintenance would seem to guarantee low prices, for there is no condition in which the full force of unrestrained competition can more effectively operate. The fact of knowing precisely

what is to be met, the privilege of analyzing a good as to quality at a uniform price, are spurs to competitors. They are given a standard to be excelled. The producer must, in the face of threatening competition, render his best service commensurate with the price. The competitor fixes the price at his own peril; if too high, purchasers will refuse to buy and competitors will do the rest.

Price maintenance is an antonym for price discrimination. A prescribed price which stands the test of time under competition is a reasonable guarantee to the child or other unskilled buyer. We sanction the advice to let the purchaser take care of himself, but we hesitate to deny him a means to that end in a market whose endless complexity makes skill in buying a distinct asset. Prescribed prices are an educative means of protection. They are standards for pricing all goods, whether price-maintained or not.

The effect of prescribed prices on the cost of marketing is easily overstated. They are feasible on but a limited number of goods, and are desired by only a few producers in any line. As a rule the producers accept the market as ready-made, depend on the middlemen to distribute their output, and very frequently prefer to produce for the middleman's own trade-mark. It is against the policy of this large class to prescribe prices, and in many cases *it would prove fatal to their business to limit trade-marks to the producer.*

Arguments for market reform are generally aimed in the wrong direction. Stores are made for consumers, and distributive agencies are shaped to meet buying habits. Modern homes have inadequate storage facilities; the function of cellars is to house the furnace and coal. The consequence is small purchases and the habit of living out of paper bags. This converts retail stores into supply stations or storage houses from which small and frequent deliveries are made. The cost of these agencies is increased by multiplying their functions. Reform is to be sought in attacking the causes of these costs rather than the policy of price maintenance. The aim should be to educate buying habits that will permit common deliveries and scientific organization on the basis of higher functions.

While price maintenance may have but little influence on intermediary costs, may not this policy tend rather to lower the cost of marketing? Haphazard prices provide numerous crevices for the small shop, huckster, and push-cart vender to eke out a living. Well known uniform prices tend to iron these out. Cut-prices needlessly multiply selling agencies at times by causing producers to provide their own means of distribution. A cheap selling force can handle well known

goods with established prices. The manufacturer's welfare depends on the consumer's satisfaction as to price and quality; his ambition is therefore to reduce middle costs to a minimum. "Squeezing the middleman" is a common phrase in the market. Price maintenance gives power to the producer to reduce marketing costs because his advertising and price fix the consumer's demands and, in turn, these demands stock the store.

There is danger in prolonged experimenting. Past experimenting has taught two lessons: (1) Competitive evils often intrench themselves in industry. They tend to deepen rather than to vanish. (2) Public opinion will not lie dormant when evil is threatening; it will not wait twenty-five or fifty years to see what is going to happen. The legislation and decisions on unfair trading since 1890 are proof of this. The problem involved in price cutting is no less serious than the permission to parasitic agencies to deaden productive initiative by appropriating the good-will of the producer.

The problem of marketing permeates all industry. All produce for the market. Every commodity is from the moment of its existence a demand for another commodity. To isolate this problem is fatal to clear reasoning and insures distorted conclusions. May it not be that the arguments here emphasized are but incidental to a profounder consideration? I refer to good-will, which is at the heart of a group of principles vital in nature: private property, initiative, thrift, and fair competition. The expansion of local markets into national and international markets requires the circulation of information about goods, but the first question the buyer asks is the price, therefore a part of this information *is* the price. Further, the producer cannot go with his wares, but his good-will is inseparably connected with them. The right to own the private property of good-will carries with it the right to protect it. But where price cutting is recognized the producer's good-will may become his own worst enemy,—a force to drive him from the market. Kellogg's brand in one store begins cutthroat competition, not with other brands, but with Kellogg's brand in another store, with the result that Kellogg's drives itself from the market.

A cut-price on goods, well known for their quality and price, is most attractive to the bargain hunter. If, as an advertising scheme, the large store underprices the Ingersoll watch, little stores discontinue its sale. They cannot tie up capital in a no-profit line. Meanwhile the parasitic dealer has appropriated the producer's good-will as an advertising scheme. The price cutter will discontinue the article as soon as he reaps the advertising effect. Not to do so would make of the

price cutter a commercial zero. Or, if cut-price goods are not actually abandoned, there are instances, like that of the Hoosier cabinet, where a few of them are carried and the "prospect" is switched to a similar good on which there is a long profit.

The essence of action in a long line of cases on unfair competition is damage, not to trade-marks as such, but to good-will or reputation or trade. Trade-marks are but symbols of good-will. To defend trade-marks and not to defend prices is frequently a contradiction in terms, for price maintenance under open competition results in fair prices, while price-cutting is a trade pirate's two-edged weapon to secure profits at the expense of another and to destroy the essence of which the trade-mark is a symbol. The private property of good-will is inseparably connected with thrift and individual initiative. Any system is deadening to these which enables one to reap what another sows.

PAUL T. CHERINGTON: Many efforts are now being put forth to make American business more scientific. It augurs well for the future of such attempts when an acknowledged leader among economists turns his attention to so intricate a problem of everyday business as price maintenance. In the course of time, when the body of fact material becomes adequate, such problems will take their place among the most important with which economists have to deal. This gives Professor Taussig's paper more than usual significance.

The paper is divided into four parts: (1) a definition; (2) a statement of the case; (3) a sitting in judgment; (4) conclusions.

The Definition.—Professor Taussig defines price maintenance as "the practice among manufacturers of prescribing the prices at which their wares shall be sold by retail dealers."

This definition is not a complete statement of what price maintenance is, nor is it accurate as far as it goes.

The first serious objection to Professor Taussig's definition is connected with his idea that the manufacturer alone dictates the price. He may or may not do so. Price maintenance ordinarily takes a form in which the resale price is the subject of a contract or agreement between the manufacturer and one or more distributers. Furthermore, this ordinarily is an agreement not upon a price arbitrarily set, but upon one of certain generally accepted prices for kindred goods. This price, it is stipulated, is to be received for the goods in question upon resale. Obviously the choice is not between the manufacturer on the one hand or the consumer on the other hand determining the price, but it is between the manufacturer and one or more of the distributers in

agreement together on the one hand, and the final distributer (or retailer) alone on the other. This right of the manufacturer and distributer to agree upon the resale price is the most important element of the price-maintenance problem.

Secondly, Professor Taussig implies that the prices to be fixed will be uniform and permanent. The exercise of this right may or may not result in the prices agreed upon being uniform in all parts of the country. Uniformity of prices in all markets has been given undue prominence in price-maintenance discussions. This is not an essential feature. The question of quantity discounts, the questions whether freight is to be included or not, and kindred problems, constantly arise for consideration, even where uniformity is attempted. Moreover, as long as there is no monopoly or manufacturer's agreement on prices, price levels may change. As a matter of fact, they are changing constantly. In the automobile industry, for instance, where price maintenance has been employed by the agency method, the price levels have tended constantly downward. No advocate of price maintenance objects to this, but he does contend that the manufacturer and the distributer ought to have the right to agree upon the way in which prices should come down, instead of leaving this entirely to the final retailer.

Furthermore, the price-maintenance agitation is concerned entirely with identified goods made and sold under competitive conditions. These facts ought to be made a part of any definition.

These changes, if introduced in Professor Taussig's definition would modify it to read about as follows: ***Price maintenance is the arrangement by which manufacturers of identified merchandise, made and sold under competitive conditions, agree with some or all of the distributers of this merchandise concerning the price at which it is to be resold.***

2. *Statement of the Case.*—Professor Taussig divides his statement of the case into two parts. The first is a presentation of the "psychological" elements and the second a presentation of the "marketing" elements of the problem. By adopting this approach to the subject he puts the discussion on an abstract basis. Effective reply to such abstract assertions as his statement of the case contains could be made only on the basis of a knowledge of facts not now available. For example, among the marketing factors he gives great importance to the aversion to change evidenced by those who are connected with the "established mechanism" for distributing merchandise. He contends that this aversion to change is due to inertia on the part of the regular trade. With equal justification it might be contended that this

aversion to change, if it exists, is due to a conviction on the part of the regular trade, as the result of experience, that the "regular" method most adequately performs the services necessary in distributing merchandise under modern conditions. But this answer may be no nearer the facts than is Professor Taussig's contention.

3. *The Sitting in Judgment.*—Professor Taussig employs the same form when he comes to "sit in judgment" on the merits of price maintenance. In this portion of the discussion we find the reasoning based on statements difficult of confirmation or refutation. For example, Professor Taussig declares that, "The existing system of conveying goods from the prime producer to the consumers is cumbersome and costly to an astonishing degree." Again, after discussing the effect of price maintenance on standards of quality, he reaches this conclusion: "Nevertheless, I question whether the system of price maintenance serves in any demonstrable degree to keep up the quality of goods." His general attitude toward the whole question is summed up in this sentence: "I suspect we shall have to content ourselves with the conclusion (or assumption?) that the ordinary purchaser is not endlessly gullible, that the predatory dealer is likely to overreach himself in the end, that honest business pays as a whole." And again, he says: "The opposition to price cutting is very largely, if not mainly, opposition to disturbers and innovators."

Such statements as these are very difficult to answer in kind, effectively. I shall not attempt it. It seems to me that more important than any need for answering them point by point is the necessity for getting back of them to some of the misconceptions of the actual situation in modern business which they indicate.

There are three of these misconceptions which seem to be most serious. The first of them is Professor Taussig's obvious misconception of the nature of *price cutting.*

I hold no brief for price maintenance in all its forms. I am anxious, however, that a discussion of it in such a body as this shall at least start with a fair presentation of both sides of the case. And this case has two well defined sides,—price maintenance and price cutting. Price cutting is the alternative offered if price maintenance is condemned. Price maintenance is mainly an effort to avoid price cutting.

Price maintenance unquestionably is capable of abuse. It is beyond dispute that price cutting also is capable of abuse. The real questions are: which of the two systems offers less risk of abuse, and which, under suitable restrictions, offers better protection of public interest. The choice is between control of prices by agreement between pro-

ducers and distributers, on the one hand, and complete control of prices by the retailer alone, on the other hand. This is the real issue.

Most of the trouble from price cutting comes from retailers with large capital. It is alleged that retailers of this type (regardless of whether their costs are less or not) by virtue of their ability to utilize the advertising value of the cut price as an accelerator of the speed of moving their other stock (even if they do not make up the loss by overcharge on other lines) are able to offer a line of identified goods regularly at a price which leaves no profit to their competitors, or even to them, on the sale of these goods. In other words, the spread becomes less than enough to make profitable the rendering of the distribution service.

These retailers, it is declared, merely use the good reputation of certain identified goods to further their own ends. They are not responsible for the preservation of the uniformity of quality of these goods. That must be preserved by the manufacturer if it is to be preserved at all. They do not care about the manufacturer's future sales. They have spent nothing on building up his reputation or that of his goods. Their large capital would enable them to give the goods away for a time if necessary, and the ultimate effect of any such action upon the general distribution of these goods is a matter of no concern to them. What these retailers are interested in is drawing to themselves, and away from their competitors, an increased share of the trade of the market they occupy.

Professor Taussig, in discussing the effect of a lowered price upon the demand schedule, takes the ground that to prevent "pushing sales" is anomalous, that a decline in price leads to an increase in sales, and that any endeavor to keep up resale prices would therefore tend to restrict the volume of business. He ignores the fact that what advocates of price maintenance object to is not that the price should be reduced, but that it should be reduced by the retailer in his own interests alone.

If price cutting were the result of the introduction of better distribution methods or operation at lower costs, no valid objection could be raised to it. But this is not the usual way in which a cut is made. Instead of retailers reducing the price in accordance with their saving in operating cost, and instead of their doing it for the purpose of increasing the sales of this merchandise, and instead of their never going below a spread covering costs, what actually happens is that a few retailers with large capital, in various localities, cut the price to a point leaving little or no spread, regardless of their own costs of

operation. The price cutter's increased sales of other articles, or increase in profits on other articles, are depended on to make up any deficit incurred in handling "cut" lines. In any case the ability of the cutter to continue to sell these goods regardless of the spread does, as Professor Taussig says, "make them unprofitable" for less well financed competitors to handle. No one would defend on economic grounds the right of any merchant to give away regularly an identified article in order to exploit his own business. This would be inequitable because of its effect on the future sales of the article, if for no other reason. Price maintenance is an effort to minimize a similar danger from cuts which may represent mere loss of profit rather than outright gift.

Professor Taussig seeks to establish some connection between price maintenance and an over-anxiety on the part of the "regular" trade to preserve the "regular" channels of trade. It is true that opposition to price maintenance originated with, and has largely been fostered by, small retailers and those who are interested in preserving small retailing. But it seems probable that this is due less to any natural conservation on the part of the "regular" trade, than it is to the fact that large capital is necessary for successful price cutting. This throws the larger retailers into the price cutting group, while the smaller retailers are left outside.

A second of Professor Taussig's conceptions of business conditions which needs clarifying is that involved in the question: *How do identified goods differ from any others in price-setting problems?*

Professor Taussig evidently takes the view that there is some virtue in the sale of goods under trade-mark under certain circumstances. But he says, "There are any number of articles which have been sold under a trade-mark year after year, generation after generation, without any dictation of retail price and also without any deterioration in quality." Again he says, "Yet in the long run profitableness of keeping up the brand suffices for the maintenance of quality." So far as I have been able to learn, most articles sold under brand were, until recently, sold under some form of price maintenance. Moreover, it is only by the employment of unusually costly methods (among which excessive advertising is conspicuous) for counteracting the inevitable effects of price cutting, that the "profitableness" of such articles can be preserved when there is no limit to the extent to which the spread may be narrowed by those who cannot suffer if the goods are driven from the market.

The connection between sale under trade-mark and price main-

tenance is more direct than would be inferred from reading Professor Taussig's discussion. As the price maintainer sees them, the chief links in this connection are: (1) Modern conditions of factory production make concealed deception of the consumer easy. (2) Sale under brand puts into the consumer's hands full power to repurchase goods he likes, or to avoid repurchase of goods he does not like. (3) In this process the preservation of *uniformity* of quality is more important than the question whether the quality be absolutely high or low. (4) General accessibility is also an important part of a successful brand-sale plan. (5) The preservation of uniformity in quality and general accessibility of articles sold by this method is possible only when the spread remains sufficient to cover the cost of rendering the services they involve. (6) Price maintenance by agreement between manufacturer and distributer makes the preservation of these services simple. Price setting by the retailer without restriction makes the preservation of these services difficult in some cases, and impossible in others.

Professor Taussig takes the position (which is beyond dispute) that the enforcement of quality standards by government regulation is not feasible except in a very few lines. But if the public is increasingly helpless to enforce quality standards by individual action or by law, is it not well to give serious consideration to the effectiveness, as a preserver of quality standards, of a system of competition (such as is offered by price maintenance) which puts emphasis on preservation of quality standards and makes sure the punishment for deception?

Another point concerning which it seems to me that Professor Taussig's conception of the facts needs to be brought closer to actual conditions is his apparent idea of *the nature of competition in identified goods.*

This term implies the existence of actual competition between brands. It implies also the absence of agreement between brand owners on price, and the absence of any appreciable degree of monopoly.

Moreover, it has to do with the method by which prices are determined, and the form which resulting competition takes. The retail price is the starting point for pricing, not merely articles to which price maintenance applies, but for most modern manufactures, and particularly for those sold under brands or trade-marks. An increasing number of goods are *made to retail* at a given price. This retail price seldom is chosen arbitrarily by the manufacturer. Ordinarily it is set by custom. For example, collars are *made to retail* at 25 cents, or at two for a quarter. Ready-made clothes are *made to retail* at $15,

\$20, \$22.50, \$25, etc. Shoes are *made to retail* at certain standard prices with standard price intervals between them. And the same statement is true of drugs, groceries, and most of the lines of merchandise suitable for branding. The price on these goods has been set by custom. The goods are *made to retail* at this price and competitive conditions under these circumstances compel the manufacturer to put into the goods more quality than his competitors can at the same price, —if he is to get the business. These conditions at the same time force the reduction of the spread to a minimum compatible with the preservation of general distribution. In other words, in the sale of these goods the spread tends to represent the sum of certain standard competitive profits and costs for the necessary distributers.

Individual skill may result in individual variations from these standard prices and costs. It does not follow that the public, under price maintenance, need lose all the fruits of such variations from standard. Any distributer who sincerely wishes to share with the public any such saving can do it by added service, or by lower prices on unidentified goods, or on his own branded goods, quite as well as by cutting prices on identified goods which were *made to retail* at a known price. and whose production and distribution costs were based on this price.

This seems to me to be a more nearly accurate statement of the pricing methods for identified goods than that made by Professor Taussig when he says, "The retail price becomes the starting point; on this the retailer makes the reasonable profit; the wholesaler in turn makes his reasonable profit, over and above the manufacturer's price; the manufacturer finally gets what remains, his own gross receipt." The manufacturer of goods of this kind manifestly does not "get what remains." Conditions of competition force him to determine at the outset what shall "remain," by deciding how much "quality" he must put into the goods in order to get the business. And, finally, with competition between brands granted, the public has ample freedom to decline to buy if price or quality or condition of sale are not satisfactory.

The price maintenance problem in the light of the foregoing discussion may be summed up in a final query: *In the case of identified merchandise, made and sold under competitive conditions, does price maintenance or price cutting offer better protection of the public interest?*

This question obviously involves the further question whether the public "in the long run" shall have their ability to get such goods seriously impaired. The interests of the consumer in a case of this kind are obvious. If the identified goods are of such a nature that he

desires them after test, there is substantial gain to him in having them accessible and in not being obliged to test new goods continuously. This is quite aside from the question whether the intrinsic qualities of any such goods be high or low.

Nor is the unfair-trading element in competition by large scale retailers a negligible factor in the problem. There are now estimated to be nearly 2800 chains of stores in this country operating over 30,000 stores. Of these over 500 chains with 8000 stores are in the grocery business and 200 chains with 1400 stores in the drug business. About half of the grocery stores in Philadelphia are said to be controlled by four concerns. In several cities the chains do over 25 per cent of the grocery business and the percentage in Philadelphia is estimated to be between 60 per cent and 70 per cent. Departmnt stores now number at least 8000 and it is estimated that about 1100 of these do over 40 per cent of the dry goods and women's "ready-to-wear" clothing business of the country.

These new types of distributer with large capital may in themselves represent an advance toward better, and perhaps more economical, distribution. But there are as yet no facts available to show that they are able actually to operate, in any except a few lines, at less cost than their smaller competitors. If they can do this, nothing can, or should stop their growth. But a feature of the price maintenance problem which cannot be neglected is this question whether such concerns are apt to use price cutting (in connection with their own large capital and the established reputation of identified goods) as a means for helping themselves create conditions of unfair trading in merchandise distribution. If they are apt to do this the policy of non-interference cannot be advocated as a safe one in the public interest.

4. *Conclusions.*—Professor Taussig's first two conclusions are: (1) "There is no public gain from giving an article an outward appurtenance of special merit." (2) "There is still less a public gain from compelling retail dealings to be made in the good old way and at the good old expense." Neither of these conclusions touches any of the really vital points involved in a choice between price maintenance and price cutting in the field under consideration. Both may be true, but neither concerns the main issue, which is whether the retailer alone is to decide the price of goods for whose reputation he is not responsible.

He next holds: (3) "The solution which has been reached by the courts is well enough." (4) "The common-law mode of dealing with it suffices." These two sentences do not picture accurately the present legal status of price maintenance. By the present interpretation of the

law such contracts are not merely unenforcible; they are illegal. That is one reason why new legislation is urged. Under present conditions price cutting is legal. Price maintenance by contract apparently is a penal offence.

His final conclusion is: (5) "Let the retailer retail as he sees fit and continue to trust in the efficacy of competition for cheapening the methods of distribution, and in the good sense of the purchasing public for assuring to them goods of the kind they really want." Is the retailer the only factor in the situation who is to operate without restraint? Can the retailer with large capital always be trusted to employ in competition only such methods as are in harmony with the public welfare? Is the good sense of the public effective against all the commercial devices that may be pitted against it?

This price maintenance question is one which, at this stage, cannot be discussed satisfactorily as a problem in economic theory. What seems necessary first is a plain, detached statement of the issues. This should be followed by an investigation into the facts, which will be a long and difficult process. After this the economic principles involved may be stated with some degree of conformity to the facts. Meanwhile, certain obvious abuses, both of restricted prices and unrestricted prices, may well be given recognition as important factors in the problem.

R. R. Bowker: It has been my privilege, as once upon a time an economist, trained in the non-interference or classical school of economics under my friend and master, David A. Wells, to apply and test economic principles in a varied business experience. Some concrete examples from this experience may be useful in this discussion, and I trust as an early member of this Association that I have not lost standing in it because I do not wear a professor's gown and that most of my work as a writer on economics was done years ago. But first let me emphasize protest against the assumption which underlies Professor Taussig's conclusion in his fair and discriminating paper, that the Stevens Bill is a measure imposing new restrictions upon trade. On the contrary, it is a corrective of the restrictions of the Sherman Anti-Trust Law, clarifying the situation. For those of us who are directors of manufacturing corporations are in honest perplexity as to what we can do or what we cannot do, under penalty of going to jail.

In ten years' administration of the Edison Company of New York, I was able, not without difficulty, to apply the principle of equal rates to all consumers under like conditions. This enabled us to increase our customers, to widen our market, and from time to time to reduce rates while increasing dividends. The best business compliment I ever

had was that if this policy had been general on the part of public utility corporations, public service commissions would have been unnecessary and the public saved their cost and some incidental scandal. This was price maintenance directly between the manufacturer and consumer, but its effect illustrates the value of the principle. At the other extreme, as a consumer, I own two Ford automobiles—and I want none better. Henry Ford, basing business development on price maintenance, has done the world and my particular self the service of producing an article of best quality at the lowest possible price and at a decreasing price, because he controlled his market in the mutual interest of buyer and seller and made no special terms of cut-prices to any one.

Of later years I have been a director of an industrial corporation which manufactures a farm implement of high quality and of very wide use. It has based its successful business development on fixed prices and it now does a business of some millions a year. It spends from a hundred thousand to a quarter million dollars yearly in advertising and it has spent hundreds of thousands in experiment and betterment, with or beyond patent protection, to keep its product of the highest quality. It has saved probably a hundred million dollars and more to the dairy industry of the country. There is intense competition in the business and no kind of combination or conspiracy to keep up prices. The mail-order houses, of which I am also a customer and which do a considerable business service to the community, sell competing machines of fair quality for a half or a third of our prices. Our policy has always been to get a good price and good profit for the best thing and to have a fair and uniform price to all users. Price maintenance has enabled us to make and keep our product the best—so at least we believe. The distributing business is partly through agents and partly through implement dealers, and it is a serious dilemma whether, under the Sherman Law, as construed by the courts, we can or cannot protect prices to consumers through these dealers, but must have recourse to the agency system.

In quite another field, one of the periodicals of my company is the organ of the book trade, so that I have necessarily kept in touch with the price-maintenance question regarding books, which are peculiarly "identified" and "identical" articles widely advertised, and therefore useful as leaders to price cutters. Price maintenance under the net-price system has of recent years largely increased the sale of books, and incidentally the prosperity and to some extent the number of retail bookstores, an important cultural element in the community.

The previous cut-price system had proved most demoralizing, retailers and jobbers demanded larger and larger trade discounts to permit cutting, and advertised retail prices had to be correspondingly increased; while the introduction of net prices in some cases reduced the retail prices of books and generally operated to prevent the increase of advertised prices, despite the general increase in material so considerable in recent years. There are two department stores in New York both of which have notable book departments, excellently equipped and managed bookstores, one of which makes a point of cut-prices, while the other is loyal to price maintenance. One of these is the successor of A. T. Stewart, pioneer in the department store business, who did the community the great service of replacing with fixed retail price the old system of bargaining and haggling which wasted the time of lady shoppers and salespeople when I was a boy and did my mother's errands. Both stores are good advertisers and do good merchandising. The cut-price establishment has successfully fought the Publishers' Association under the Sherman Law and has made much advertising capital out of the fight. I have reason to know that it has sold books at less than the price at which they were actually bought, and it stands to reason that when the "spread" on one line of goods is low or negative, as in this case, the "spread" on the other lines must be made proportionately greater—to the disadvantage of the consumer who is led to think that he can buy other goods as cheaply as books. Otherwise department stores must fail as many have failed in New York.

The overhead charges of a retail bookstore are high, exceeding twenty-five per cent, and requiring a "spread" of a third of the retail price to give any margin of profit; but the overhead costs of a department store are as high and probably higher, as the figures published in *System* have indicated. The experience of the book trade, as to price maintenance and price-cutting, is to my mind one of the best illustrations of the desirability of the Stevens Bill. I may add that on our own periodicals a definite system of fixed prices for advertising, giving like rates for like quantities of advertising, has been the absolute rule for years, to the mutual advantage and satisfaction on the whole of proprietors, advertising representatives, and advertisers.

Let me again emphasize what Mr. Stevens has, I think, made clear, that the bill which bears his name—I refer to it in principle rather than in detail, for it is not without ambiguities and may need clarifying and correction—is not a restrictive, paternal measure, but simply a correction of the unfortunate extremes to which the Sherman Anti-Trust Law has carried restriction.